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3 DOROTHY CATHERINE BRAGA, by and
4 through the Conservator of her Person and
5 her Estate, Mary Ann Warren, the Public
6 Guardian of the County of Santa Clara,

7 Plaintiffs,
8
9 v.
10

11 STEPHEN JOSEPH BRAGA,
12
13 Defendant.

14 Case No. 21-cv-06331-BLF
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**ORDER GRANTING DEFENDANT'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS; AND ORDER TO
SHOW CAUSE WHY CASE SHOULD
NOT BE REMANDED FOR LACK OF
SUBJECT MATTER JURISDICTION**

17 On August 16, 2021, Defendant Stephen Joseph Braga filed a Notice of Removal,
18 purporting to remove this probate action from the Santa Clara County Superior Court. Defendant
19 also filed an application to proceed in district court *in forma pauperis* ("IFP"). The case action
was reassigned to the undersigned judge on August 27, 2021.

20 Defendant's application to proceed IFP is GRANTED.

21 Defendant is ORDERED TO SHOW CAUSE, in writing and on or before September 22,
22 2021, why this action should not be remanded to the Santa Clara County Superior Court for lack
23 of federal subject matter jurisdiction. Based on the document attached to the Notice of Removal,
24 titled "Notice of Hearing – Guardianship or Conservatorship," it appears that this probate action
25 involves a petition to quiet title to real property brought by Plaintiff Dorothy C. Braga, by and
26 through the Conservator of her Person and her Estate, Mary Ann Warren, the Public Guardian of
27 the County of Santa Clara. "The probate exception to federal jurisdiction reserves probate matters
28 to state probate courts and precludes federal courts from disposing of property in the custody of a

1 state court.” *Goncalves By & Through Goncalves v. Rady Children’s Hosp. San Diego*, 865 F.3d
2 1237, 1251 (9th Cir. 2017) (citing *Marshall v. Marshall*, 547 U.S. 293, 311 (2006)). The present
3 action appears to fall squarely within this exception to federal jurisdiction. The Court notes that
4 Defendant refers to numerous federal statutes in the Notice of Removal. The relevance of those
5 statutes to the probate matter is unclear. Even if one or more of those federal statutes could be
6 raised as a defense to the probate action, “[f]ederal jurisdiction cannot be predicated on an actual
7 or anticipated defense.” *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009).

8 If Defendant fails to respond to the Order to Show Cause, or does respond but fails to
9 establish a basis for federal subject matter jurisdiction over this state probate action, the action will
10 be remanded to the Santa Clara County Superior Court.

11 **IT IS SO ORDERED.**

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13 Dated: September 8, 2021


14 BETH LABSON FREEMAN
15 United States District Judge

United States District Court
Northern District of California